IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1332 of 2006
Date of Decision: 22.8.2006

Bhupinder Kumar Aggarwal ...Appellant

Versus

M/s K.R.S. Builders ....Respondent

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri G.S. Sandhawalia, Advocate, for the appellant.

JUDGMENT

The defendant is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby in a suit for recovery of the amount of Rs. 2 lacs as principal amount and Rs.1,08,000/- towards the interest, a decree for recovery of Rs.2 lacs along with interest @ 12% per annum from 27.4.1994 till the date of decree, was passed by the learned trial Court. Such decree was affirmed in appeal.

It is the case of the plaintiff that a sum of Rs. 2 lacs was advanced as loan vide cheque dated 27.4.1994 drawn on UCO Bank, Industrial Area Branch, Jalandhar, but when the plaintiff sought refund of the said amount, the same was declined.

In the written statement, the defendant has taken up a stand that the plaintiff has agreed to purchase the land measuring 45 kanals 18 marlas @ Rs.50,000/- per marla. The said amount of Rs. 2 lacs was paid as earnest money and another sum of Rs.5,50,000/- was paid subsequently in the month of January, 1994 and March 1995 by different cheques. Since the plaintiff tried to enter into an agreement with the brothers of the defendant,

therefore, the deal with the defendant was abandoned. Still further it has been found that the plaintiff has tried to raise illegal construction by trespassing over the land in question. It was denied that the sum of Rs.2 lacs was ever taken on loan or that the defendant is liable to pay any interest on the same.

Both the Courts have recorded concurrent finding of fact that the defendant-appellant has failed to lead any evidence of the agreement of sale in respect of the land in dispute and thus, passed a decree on the basis of the fact that the receipt of amount of Rs.7,50,000/- is admitted by the defendant.

Learned counsel for the appellant has vehemently argued that since the plaintiff failed to perform its part of the contract, therefore, the amount of Rs.7,50,000/- is forfeited. The plaintiff has not produced its account books to show that the amount was advanced to the defendant as loan and that the defendant has already filed a suit for possession even prior to the filing of the present suit. Therefore, the decree passed by the Courts below is not sustainable.

However, a perusal of the plaint of the suit for possession filed by the plaintiff Mark-A shows that the appellant has not referred to any oral agreement in respect of sale of land to the plaintiff-respondent. Such agreement was alleged in the written statement, in the present suit. The argument that the plaintiff has not produced its account books, is again not sustainable. The defendant-appellant has admitted the receipt of the amount of Rs.7,50,000/- and raised a plea of oral agreement of sale of land. Once, the appellant has failed to substantiate his plea of oral agreement, the claim of the plaintiff has been rightly decreed by the Courts below.

Both the Courts have recorded concurrent finding of fact that the defendant has failed to prove any oral agreement. Such finding is a finding of fact, based on proper appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration.

No substantial question of law arises for consideration.

Hence, the present appeal is dismissed.

22-08-2006 (HEMANT GUPTA)
ds JUDGE